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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 07-7511-RGK (RCx)	Date	June 19, 2008
Title	Claude A. Reese v. Robert A. Malone et al.		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Sharon L. Williams	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
Not Present		Not Present

Proceedings: **(IN CHAMBERS)** Plaintiff's Motion to Transfer Venue (DE 31)

I. FACTUAL BACKGROUND

On November 11, 2007, Nominal Plaintiff Claude A. Reese, on behalf of all persons who purchased British Petroleum p.l.c. ("BP") securities during the period March 31, 2005 through August 4, 2006 (the "Class Period"), brought this purported class action suit against BP executives Robert A. Malone and John Brown for breach of fiduciary duty under sections 10(b) and 20(a) of the amended Securities and Exchange Act of 1934. On February 29, 2008, the Institutional Investors Group ("IIG") filed a suit representing the same class in this district, adding BP p.l.c., BP Exploration Alaska ("BPXA"), BP America, Steven Marshall, and Maureen L. Johnson as defendants (collectively, "Defendants"). On April 17, 2008, the Court consolidated the two actions and appointed IIG as Lead Plaintiffs. A consolidated complaint was filed on May 12, 2008.

This lawsuit (the "California Action") arises out of a leak from a BP oil pipeline in Prudhoe Bay, Alaska in March 2006. The Prudhoe Bay field officially shut down in August 2006. Lead Plaintiffs allege that Defendants made false and misleading statements about the prior maintenance and current condition of the pipelines and that BP failed to maintain the lines to an accepted industry level of care. BP's stock price declined during the two months following the shutdown.

A lawsuit arising out of the same oil spill is currently pending in the Western District of Washington (the "Washington Action"). The core allegations - the false and misleading statements and improper maintenance of the pipelines - are the same. In that action, however, the plaintiffs represent a class of persons who purchased units of the BP Prudhoe Bay Royalty Trust ("PBRT"), a Trust dedicated solely to BP's operations in Prudhoe Bay.

Presently before the Court is Lead Plaintiffs' Motion to Transfer Venue under 28 U.S.C. § 1404(a). For the following reasons, the Court **grants** the motion.

II. JUDICIAL STANDARD

Section 1404(a) provides: "For the convenience of parties and witnesses and in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). In deciding a motion to transfer under § 1404(a), a district court must consider the following: (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interests of justice. *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979); *Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F. Supp. 503, 506 (C.D. Cal. 1992).

The decision to transfer under Section 1404(a) lies within the discretion of the Court. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 639 (9th Cir. 1988).

III. DISCUSSION

For the reasons given below, the Court finds that a balanced consideration of the above § 1404(a) factors supports transfer. As a preliminary matter, the Court first observes that the Washington district court is a proper venue and has jurisdiction over this action.

A. This Action Could Have Been Brought in the Western District of Washington.

To support a motion for transfer under § 1404(a), Lead Plaintiffs must show that the proposed transferee court is one in which the action could have been commenced originally. 28 U.S.C. § 1404(a). Under Section 27 of the Exchange Act, an action can be brought in any district where an act or transaction constituting the violation occurred. Defendants disseminated via the media and SEC filings the allegedly fraudulent statements in every district in the United States, including the Western District of Washington. Therefore, this action could have been brought in the Western District of Washington. This element is not in dispute among the parties.

B. The 1404(a) Factors Weigh in Favor of Transfer.

Section 1404(a) is intended to place discretion on the Court to adjudicate motions for transfer according to an "'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). The moving party has the burden of showing that the convenience of the parties and witnesses and the interests of justice require transfer to another district. *Commodity Futures Trading Comm'n*, 611 F.2d at 279.

There is no clear authority in the Ninth Circuit as to which factor - convenience of the parties, convenience of the witnesses, or the interests of justice - carries the most weight. *Compare In re Yahoo!*, No. CV 07-3125 CAS, 2008 WL 707405, at *3 (C.D. Cal. Mar. 10, 2008) ("The convenience of the witnesses is usually the most important factor to consider in whether deciding to transfer an action.") *with Alere Medical, Inc. v. Health Hero Network, Inc.*, No. C 07-05054 CRB, 2007 WL 4351019, at *1 (N.D. Cal. Dec. 12, 2007) ("[T]he interest of justice is the most important consideration."). It is well established, however, that multiple factors govern transfer within the federal court system and must be weighed at the Court's discretion. *Stewart*, 487 U.S. 22 at 31; *Sparling*, 864 F.2d at 639.

1. *The Convenience of the Parties Does Not Require Transfer.*

The main consideration in deciding the convenience of the parties is the parties' contacts with the forum. *In re Yahoo!*, 2008 WL 707405, at *3. Here, Defendant BPXA's principal place of business is Alaska, Defendant BP America is headquartered in Illinois, Plaintiffs are scattered throughout the United States, and the key events took place in Alaska. Neither party, therefore, has significant contacts with either California or Washington. Accordingly, the Court finds that the convenience of the parties does not require transfer.

2. *The Convenience of the Witnesses Does Not Require Transfer.*

This factor takes into account the witnesses outside the scope of the Court's subpoena power and the geographic location of any potential witnesses. *In re Yahoo!*, 2008 WL 707405, at *3. Here, no potential witnesses reside in California or Washington. Therefore, convenience of the witnesses does not require transfer to Washington.[1]

3. *The Interests of Justice Support Transfer.*

A 1404(a) motion to transfer requires weighing a number of case-specific factors to determine whether transfer will serve the interests of justice. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). For example, the Court may consider: (1) judicial economy; (2) the plaintiff's choice of forum; and (3) the moving party's motivation for transfer. *Id.; Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964); *Gerin v. Aegon USA, Inc.*, No. C 06-5407 SBA, 2007 WL 1033472, at *7 (N.D. Cal. Apr. 4, 2007).

a. *Judicial Economy*

The purpose of Section 1404(a) is to prevent the waste "of time, energy and money." *Van Dusen*, 376 U.S. at 616. To this end, the Court may consider the existence of related litigation in another district and whether transfer could avoid duplicative litigation. *In re Genesisintermedia, Inc., Sec. Litig.*, No. 01-09024 SVW, 2003 WL 25667662, at *4 (C.D. Cal. June 12, 2003).

Lead Plaintiffs argue that transfer will maximize judicial efficiency because the parties in both actions could coordinate discovery. This assertion is premised on the notion that the two actions have enough similarities to make coordinated discovery possible. Specifically, Plaintiffs note that both cases include the causes of the oil spill, the shutdown of Prudhoe Bay, the alleged under-maintenance of the pipelines, and the state of mind of Defendants regarding the pipelines and maintenance programs. Moreover, the majority of the allegations in both cases are the same. Both actions assert claims arising under Sections 18 and 20 of the Exchange Act. Because both cases arise from the same underlying facts and questions of law, Lead Plaintiffs assert that much of the discovery and the witnesses will be the same in both cases.

In response, Defendants argue that the two actions have significant differences. Specifically, the plaintiffs and class periods in each case are different. Second, there are more defendants in the California Action. Third, there are misstatements alleged in the California Action that are not alleged in

[1] Plaintiffs argue that should this case remain in California, the witnesses in Washington might be subject to depositions in two places. This concern is more appropriately addressed under the "interests of justice" factor, discussed below.

the Washington Action and vice versa. Further, while Defendants concede that both cases have areas of overlap, they argue that the Washington Action is so far advanced in litigation that efficiency gains are unlikely to be realized.

On balance, the Court finds that the two actions are substantially similar such that transfer will maximize judicial efficiency. Although the plaintiffs in each case are different, this will not be an impediment to increasing discovery efficiency, as both cases concern Defendants' actions up to and following the oil spill. Second, while the class periods in the cases are slightly different, both start on the same date, and the class period in the California action is six months shorter. Because the class period in the California Action is entirely subsumed in the Washington Action, transfer will not present new issues based on the differing class periods. Third, although there are more defendants in the California action, the core defendants - BP, its subsidiaries, and the top executives - are the same. Finally, the general nature of the misleading statements - that BP allegedly misstated the conditions of the pipelines and its failure to maintain those pipelines - are common to both actions.

The Court rejects Defendants' argument that coordinated discovery would not be possible due to the Washington Action being too far advanced in litigation. Discovery in the Washington Action has just begun and is set to end in April 2009. Further, document production is not complete and not a single deposition has been taken. To this extent, coordinated discovery between the two actions is possible.

At a minimum, by transferring this case to Washington, only one federal court will have to familiarize itself with the factual and legal issues of this dispute. Transfer will also avoid the potential for inconsistent rulings.

Accordingly, the Court finds that transfer would maximize judicial economy.

b. Plaintiff's Choice of Forum

Defendants argue that "Plaintiffs voluntarily filed their complaint in this District" and that "Plaintiffs should not be permitted to impose on this Court to rule on a Lead Plaintiff motion and then change their mind and ask this Court to transfer the action to a different District." (Defs.' Opp. at 12.) These statements are ambiguous. To the extent that Defendants' reference to "Plaintiffs" refers to the Nominal Plaintiff, the Nominal Plaintiff's decision to file in California is afforded little weight. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987).

To the extent that Defendants' reference to "Plaintiffs" refers to the Lead Plaintiffs, Defendants fail to cite authority supporting the proposition that filing a complaint in one district precludes a plaintiff from later transferring to another district. Moreover, the filing of the complaint and the motion to transfer does not appear to be the result of forum shopping, as discussed below.

Finally, it appears that Defendants may be suggesting that Plaintiffs' decision to move for appointment as Lead Plaintiffs in this District militates against allowing transfer. However, the Private Securities Litigation Reform Act requires "any member of the purported class [to] move the court to serve as lead plaintiff." [2] 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). Accordingly, Plaintiffs were required to

[2]The PSLRA sets out specific rules for appointment as lead plaintiffs in securities class actions. After filing a class action complaint in district court, the first to file plaintiff must publish a notice stating that "any member of the purported class may move the court to serve as lead plaintiff." *In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002). Publication of that notice triggers § 78u-4(a)(3)(A)(i)(II), requiring any member wishing to act as lead plaintiff to move that court for

move this Court to serve as lead plaintiff.

c. Judge-shopping

Defendants argue that Plaintiffs' motion to transfer venue amounts to judge-shopping. Specifically, Defendants note that on October 26, 2007, the judge in the Washington Action denied a motion to dismiss by the defendants in that case. Thus, they argue that Plaintiffs' motivation for transfer is to secure a judge whom they believe will be more receptive to their arguments. However, the ruling on the motion to dismiss in the Washington Action was issued before Plaintiffs filed in this District. Accordingly, forum shopping does not appear to be a major concern.

In sum, the Court finds that although the convenience of the parties and witnesses do not support transfer, the interests of justice require transfer.

III. CONCLUSION

In light of the foregoing, Lead Plaintiffs' Motion for Transfer of Venue is **granted**.

IT IS SO ORDERED.

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appointment within 60 days. *Id.; see, e.g., Ferrari v. Gisch*, No. CV 037063NM (SHx), 255 F.R.D. 599, 603 (C.D. Cal. May 21, 2004); *In re Applied Signal Tech. Sec. Litig.*, No. C 05-1027, 2005 WL 1656886, at *2 (N.D. Cal. July 14, 2005).